

File Date: 2/11/2008

Case No: 08cv939

ATTACHMENT # 4

EXHIBIT _____

TAB (DESCRIPTION)

Proceedings from 1/6/2005 cont'd

1 the jury. I got 12 copies.

2 THE COURT: You understand that there may be
3 things in that transcript that hurt you as well?

4 THE DEFENDANT: I want to give it to them.

5 THE COURT: Okay. There's no objection. If
6 there is no objection -- and who testified at that
7 hearing?

8 MS. CALLAS: Mr. Pagan and Ms. Nueva.

9 THE COURT: And you're seeking to introduce
10 that to the jury?

11 THE DEFENDANT: Yes, ma'am, please.

12 THE COURT: All right, and State has no
13 objection to it. Despite the hearsay statements in
14 there, you'll be allowed to introduce that.

15 THE DEFENDANT: Yes.

16 THE COURT: You do have 12 copies of that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: If you want to lay those on the
19 table there, then the deputy can hand those to the
20 jury at the appropriate time.

21 THE DEFENDANT: I'll just hold it until the
22 right time.

23 THE COURT: Do you have copies, or do you need
24 copies made, sir?

1 THE DEFENDANT: I think I need one more.

2 MS. SCHULTZ: We can give the original, and
3 they can share it.

4 THE COURT: If you want 12 copies made, it's a
5 short transcript.

6 MS. CALLAS: Yes.

7 THE COURT: You want all of them to have an
8 opportunity to look at this?

9 THE DEFENDANT: Yes.

10 THE COURT: Any other witnesses that you're
11 going to call?

12 THE DEFENDANT: No.

13 THE COURT: Are you going to testify on your
14 own behalf?

15 THE DEFENDANT: No.

16 THE COURT: You know, you have the absolute
17 right to testify.

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Is there anything else that you
20 wish, any other evidence?

21 THE DEFENDANT: No. I'm ready for closing
22 arguments, ma'am.

23 THE COURT: Why don't you see if you have 12
24 copies of the transcript? Otherwise, we can get 12

1 copies for you to present.

2 MS. CALLAS: Do you want to do a jury
3 instruction conference?

4 THE COURT: Have you had a -- let's do it on
5 the record.

6 Have you gone through these
7 instructions?

8 THE DEFENDANT: Yes, ma'am. No objection to
9 them.

10 THE COURT: No objection to any of these?

11 MS. SCHULTZ: Some have to be taken out,
12 Judge.

13 THE COURT: We'll go through them quickly.
14 101 is the members of the jury instruction.
15 There's no objection to that, is that correct, Mr.
16 Griffin?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: 1202.

19 MS. SCHULTZ: The first one should be
20 admitted, Judge.

21 THE COURT: The testimony of the defendant,
22 the defendant is not going to testify. That'll be
23 withdrawn. And the second 102. 103 is opening
24 statements. 104, excuse me, 104 regards juror

1 notes. 201 states the charge and the defendant's
2 plea of not guilty. 202 describes the
3 information. 203 is the presumption of innocence.
4 302 is circumstantial evidence. 313 is
5 conviction. I take it you're withdrawing that?

6 MS. CALLAS: Withdraw.

7 THE COURT: Defendant did not testify. 1407
8 is the offense of burglary. 1408 are the
9 propositions necessary to be proved. 2601 is
10 discussing unanimous verdicts and what they do when
11 they retire to the jury room, and there's two forms
12 of verdicts of not guilty and a guilty.

13 MS. SCHULTZ: I didn't hear. Did you get
14 1408? I don't know if you said that or not.

15 THE COURT: Yes.

16 Mr. Griffin, you have no objections to
17 these instructions?

18 THE DEFENDANT: No.

19 MS. CALLAS: Do you have a clean copy?

20 THE COURT: I do. Why don't we take a short
21 recess? If lunch is not here, we can --

22 MS. CALLAS: Do you want to do that before we
23 eat?

24 THE COURT: If lunch is not here, let's take a

1 couple minutes to let the court reporter change her
2 paper. Do you have 12 copies of that transcript?

3 THE DEFENDANT: No. I only have 1, 2, 3, 4,
4 5, 6 -- I do.

5 THE COURT: Six. So, you would like one copy
6 for each juror, right?

7 THE DEFENDANT: Yes.

8 THE COURT: We'll get additional copies made
9 during the break.

10 THE DEFENDANT: Okay.

11 (Lunch recess.)

12 THE CLERK: Dwayne Griffin.

13 THE COURT: Mr. Griffin, over the lunch break,
14 I had an opportunity to reflect on your request to
15 introduce the transcript of the preliminary hearing
16 which is February 27, 2004. That's not proper.
17 It's simply not admissible to introduce the entire
18 transcript of that proceeding. It contains
19 testimony of two witnesses. It contains the
20 testimony -- or the findings of the Judge. It's
21 just not proper.

22 So, I will not allow you to do that. If
23 there's something else you wish to do with regard
24 to the transcript, you can read some sort of

1 stipulation or agreement, I'd be happy to consider
2 that; but it's inadmissible to introduce the
3 transcript.

4 THE DEFENDANT: I'll appeal it. I'll appeal
5 it. This is evidence that's supposed to be given
6 to a jury on my behalf.

7 THE COURT: Is there a certain portion of the
8 transcript --

9 THE DEFENDANT: The whole transcript, the
10 whole transcript. This is evidence, statements
11 that was previously given at a proceeding.

12 THE COURT: You're seeking -- are you seeking
13 to introduce the testimony of certain witnesses
14 that were given at that hearing?

15 THE DEFENDANT: The whole transcript.

16 THE COURT: Well, sir, the whole transcript is
17 not admissible. If you want to introduce the
18 testimony of the first witness Yvette Nueva, the
19 questions that were asked of her and the answers
20 that were given, and the State has no objection to
21 that, and the testimony of Jose Pagan and the
22 questions and the answers that were given to that,
23 and if the State has no objection, that's another
24 matter; but I'm not going to introduce the entire

1 transcript which includes the Judge's finding of
2 probable cause.

3 THE DEFENDANT: Well, I'm ready to proceed.
4 They'll get it some kind of way. I'm ready to
5 proceed. I'm ready for closing arguments.

6 THE COURT: And in front of the jury, I'll
7 bring out the jury, I'll ask you if there is any
8 evidence you wish to present at this time, and
9 you're going to indicate that there's no evidence;
10 and then, we'll proceed with closing argument, is
11 that correct?

12 THE DEFENDANT: No. I will be telling a lie
13 then.

14 MS. CALLAS: Judge, I have no objection to the
15 testimony of Ms. Nueva and the testimony of Mr.
16 Pagan from the preliminary hearing transcript going
17 back. Do you need the finding of Judge? Do you
18 want the finding of Judge sent back?

19 THE DEFENDANT: I want it sent back there, the
20 whole transcript.

21 MS. CALLAS: I have no objection to the whole
22 transcript going back as well.

23 THE COURT: You're seeking this entire
24 transcript?

1 THE DEFENDANT: The entire transcript.

2 THE COURT: Mr. Griffin, you're representing
3 yourself?

4 THE DEFENDANT: Yes.

5 THE COURT: And you understand that on appeal,
6 you cannot complain about any information --

7 THE DEFENDANT: Yes.

8 THE COURT: -- in this preliminary hearing
9 transcript that goes back to the jury?

10 THE DEFENDANT: Yes.

11 THE COURT: And you believe that you're
12 hampered presenting your defense if I do not allow
13 this to go back?

14 THE DEFENDANT: Yes.

15 THE COURT: And why is that?

16 THE DEFENDANT: Because this is evidence.

17 These are statements that was given against me that
18 needs to be addressed to the jury in my behalf.

19 THE COURT: And you believe these statements
20 are --

21 THE DEFENDANT: Yes.

22 THE COURT: -- under oath, you would like them
23 to go back to the jury?

24 THE DEFENDANT: Yes.

1 THE COURT: All right. Okay. If there's no
2 objection then, and it's your request, and you
3 waive any objections on appeal, then I will allow
4 it to go back. That's your request, is that right,
5 sir?

6 THE DEFENDANT: I'm not waiving any requests
7 on appeal, your Honor. I want this, and I demand
8 it, that they receive it.

9 THE COURT: Notwithstanding the fact that I
10 told you that it's otherwise inadmissible.

11 THE DEFENDANT: It's not inadmissible. It's
12 evidence. It's statements that were given,
13 previously given.

14 THE COURT: Notwithstanding the fact that I
15 told you that it's inadmissible, and you will not
16 be able to complain on appeal.

17 THE DEFENDANT: Can you show me the law where
18 it's inadmissible?

19 THE COURT: Do you still wish to have this
20 introduced?

21 THE DEFENDANT: Can you show me the law?
22 These are statements that were given? Can you
23 please show me in the law?

24 MS. SCHULTZ: Objection to arguing with you,

1 Judge.

2 THE DEFENDANT: Can you show me the law?

3 THE COURT: Do you wish to have this
4 introduced or not?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: All right. You have copies?

7 MS. CALLAS: Can we have our copy back?

8 THE COURT: Did we get the copies that he
9 wanted?

10 MS. SCHULTZ: I don't know. Did we? Were the
11 sheriffs going to do that?

12 MS. CALLAS: Were you guys making copies for
13 them?

14 A DEPUTY: No, we did not.

15 THE COURT: We'll send back one copy, and they
16 can all look at it.

17 MS. CALLAS: They can send back one copy, and
18 they can share it. There's no need that they each
19 have a copy.

20 THE COURT: Okay. That's fine. We'll bring
21 out the jury. You can mark that as an exhibit,
22 your next exhibit number, if that's what you wish
23 to do, Defendant's Exhibit, I believe.

24 THE DEFENDANT: 4B, preliminary hearing before

1 Judge Gerald T. Wienicki on February 27, 2004.

2 MS. CALLAS: Judge, what about the rest of the
3 exhibits? Did we address that?

4 THE COURT: No.

5 MS. SCHULTZ: Should we stop the jury from
6 coming back in?

7 THE COURT: Let's proceed with this.

8 A DEPUTY: All rise for the jury.

9 (Whereupon, the following proceedings
10 were had in the presence of the jury:)

11 A DEPUTY: Jury is present and accounted for.

12 THE COURT: Thank you. Please be seated.

13 Before lunch, the State had rested. At
14 this time, we'll turn to the defendant. The
15 defendant does not need to present any evidence.

16 Does the defense wish to introduce any
17 evidence at this time?

18 THE DEFENDANT: Yes. Your Honor, it's the
19 preliminary hearing. I have copies for the jury.
20 It's the jury's duty as jurors --

21 THE COURT: Sir, it's not time for closing
22 arguments. Do you wish to call any witnesses?

23 THE DEFENDANT: This is my closing arguments,
24 your Honor.

1 THE COURT: We'll argue in just a moment. Do
2 you wish to call any witnesses?

3 THE DEFENDANT: No.

4 THE COURT: Do you wish to introduce any
5 evidence?

6 THE DEFENDANT: Yes.

7 THE COURT: And what do you wish to
8 introduce?

9 THE DEFENDANT: Preliminary hearing.

10 THE COURT: You have marked that as an
11 exhibit, sir?

12 THE DEFENDANT: 4B.

13 THE COURT: You have a copy to tender to the
14 Court?

15 THE DEFENDANT: Yes.

16 THE COURT: You're asking that that be
17 admitted into the evidence?

18 THE DEFENDANT: I had plenty copies made for
19 the jury that they must see. I have plenty of
20 copies.

21 THE COURT: How many copies do you have, sir?

22 THE DEFENDANT: I have 1, 2, 3, 4, 5, 6, 7.

23 THE COURT: Okay. They can share them. We'll
24 make these available to the jury. Defendant's

1 Exhibit 4. You're asking that to be introduced
2 into evidence?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: State, do you have any objection?

5 MS. CALLAS: No objection.

6 THE COURT: It will be admitted into evidence.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Are you asking for that to be
9 published to the jury?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you want them to look at it at
12 this time, or do you want to proceed with
13 argument?

14 THE DEFENDANT: I want to proceed with
15 argument.

16 THE COURT: Okay. Then, we can hold onto
17 them. We'll publish them at the time that they can
18 go back to the jury.

19 THE DEFENDANT: Okay.

20 THE COURT: Any other evidence, Mr. Griffin?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: The Defense rests?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: State, any rebuttal evidence?

1 MS. CALLAS: People rest in rebuttal, Judge.

2 No rebuttal.

3 THE COURT: You can have a seat, Mr. Griffin,
4 because the State will go first.

5 You've heard all the evidence in this
6 case. At this time, the parties have an
7 opportunity to address you in what's called closing
8 arguments. The State has the burden of proof. So,
9 they will address you first. Then, the defendant
10 has an opportunity to address you. The State has a
11 burden of proof. So, they also have an opportunity
12 for rebuttal argument after the defendant has
13 argued.

14 So, at this time on behalf of the People,
15 Ms. Schultz.

16 MS. SCHULTZ: Thank you.

17 We're now at the stage of the jury trial
18 where you are to deliberate. You are to apply the
19 evidence that you've heard at trial, the exhibits,
20 the testimony to the applicable law. And Judge
21 Sullivan is going to read you those instructions,
22 and you will have those instructions to review with
23 you when you deliberate.

24 As was told in opening statement, this

1 was a short, simple trial, and so are the jury
2 instructions; but I'd like to review some of those
3 instructions with you so that you know what to
4 apply, what evidence you've heard, to the law.

5 First of all, in order to determine
6 whether or not this defendant is guilty of
7 burglary, you might want to know what the
8 definition of burglary is. And you're going to get
9 that definition, but I'd just like to read it to
10 you so I can discuss with you the fact that you
11 heard today with that definition.

12 A person commits the offense of burglary
13 when he, without authority, knowingly enters a
14 building or any part thereof with the intent to
15 commit therein the offense of theft. That's the
16 definition of burglary.

17 But what must the State prove, beyond a
18 reasonable doubt, to find Mr. Griffin guilty of
19 burglary? And you will also receive an instruction
20 for that. And that instruction reads, to sustain
21 the charge of burglary by unauthorized entry, the
22 State must proof the following propositions, and
23 there are three propositions.

24 The first, that the defendant knowingly

1 entered a building or any part thereof; and second
2 proposition, that the defendant did so without
3 authority; and third, that the defendant did so
4 with the intent to commit the theft -- to commit
5 therein the offense of theft.

6 If you find from your considerations of
7 all of the evidence that each one of these
8 propositions has been proved beyond a reasonable
9 doubt, then you should find the defendant guilty.
10 If you find from your considerations of all the
11 evidence that any one of these propositions has not
12 been proved beyond a reasonable doubt, you should
13 find the defendant not guilty.

14 In addition to the jury instructions that
15 you have, you will also -- and the facts that were
16 presented, you will have your collective, common
17 life experiences. And I want you all to use those
18 when you determine whether or not the defendant
19 committed this charge.

20 The State must prove, beyond a reasonable
21 doubt, the defendant committed a burglary. The
22 State embraces that burden; and in this case, we
23 have conquered that burden with credible evidence
24 from the sworn testimony of three witnesses. They

1 came here, and they told you what happened.

2 And in judging whether or not they were
3 credible, or whether or not they were believable,
4 you'll be given a jury instruction with respect to
5 that. And that jury instruction reads, only you
6 are the judges of the believability of the
7 witnesses and of the weight to be given to the
8 testimony of each of them.

9 In considering the testimony of any
10 witness, you may take into his account his ability
11 and opportunity to observe, his memory, his manner
12 while testifying, any interest, bias or prejudice
13 he may have, and the reasonableness of his
14 testimony considered in the light of all the
15 evidence in this case. We have credible evidence
16 with the testimony.

17 We also have circumstantial evidence, and
18 circumstantial evidence is as strong and is as
19 credible as direct evidence. And there's a
20 definition of circumstantial evidence, and I'm read
21 the definition, but all I can really say is you
22 know it when you see it. That's what
23 circumstantial evidence is. I'll read the
24 definition and try to give you an example of what

1 circumstantial evidence is.

2 Circumstantial evidence is the proof of
3 facts or circumstances which give rise to
4 reasonable inferences of other facts which tend to
5 show the guilt or innocence of a defendant.

6 Circumstantial evidence should be considered by you
7 together with all the other evidence in the case in
8 arriving at your verdict.

9 An example that I can think of
10 circumstantial evidence and is probably appropriate
11 for the weather that we're having today is that
12 maybe when you came to the courthouse this morning,
13 you walked. Your feet got all full of snow, and
14 there was snow on the ground, and you came to the
15 building.

16 When you leave today when you walk out
17 the building and the sidewalk is clear and there's
18 a man with a shovel there, you'll know he just
19 shoveled the sidewalk. You didn't see him do it.
20 You don't have any direct evidence that he did it,
21 but you can infer from the evidence, from the clean
22 sidewalk, the fact that he has a shovel, that he,
23 in fact -- his actions were that he shoveled the
24 sidewalk.

1 From all the facts that we have today,
2 you heard today, infer and demonstrate that this
3 defendant went to the Blockbuster, broke the
4 window, took the merchandise, placed some of it in
5 a garbage can, and then was caught by the police
6 officers, and then dropped it.

7 What evidence do we have? We have the
8 evidence of a Chicago Police Officer who testified
9 credibly. He was candid. He was honest. He was
10 straight forward. There is nothing on cross
11 examination or direct examination that gave any
12 bias or motive for this defendant -- for this
13 officer to lie, to fabricate. He was mistaken in
14 his observations that he didn't see what he saw.
15 He just came here, and he told you what happened,
16 what he saw.

17 And what did he see? He sees the
18 defendant at 4:00 o'clock in the morning next to
19 the window -- a broken window at Blockbuster,
20 hunched over carrying numerous videos standing
21 there looking in the officer's direction, dropped
22 the property and walk away trying to get as far
23 away as he can, removing himself from the scene.

24 The officer testified credibly. His

1 demeanor. He was subjected to cross-examination.
2 He just simply told you what happened.

3 This is a simple case, but the fact that
4 a burglary occurred and the videos were recovered
5 should not depreciate the seriousness of the crime,
6 not only to the victims but to society.

7 Burglary is running rampant in our
8 society. The defendant should be held accountable
9 for his actions. You just can't go and break a
10 window and take some videos. Hold the defendant
11 responsible for what we have proved, what we have
12 established. The defendant was guilty of
13 burglarizing, by reaching into that window and
14 taking those videos, of burglary of the
15 Blockbuster.

16 Thank you.

17 THE COURT: Mr. Griffin.

18 THE DEFENDANT: Yes. Like I told you in the
19 beginning, conspiracy. They gave true statements.
20 Lies. They don't remember nothing. Who did this?
21 When this became missing? When this became
22 missing? Back then, I had 5. Today, we have 30?
23 Back then, it never was told to that Judge, hold
24 it, I got stuff missing at my place.

1 You're going to know because I'm going to
2 tell you whether you are a State's Attorney or
3 whoever you are. This is what I had missing at my
4 place this day. When you do an inventory before
5 and after; but now it's 30, but it never was
6 mentioned back then in front of another Judge, and
7 you have statements.

8 No fingerprints? Hold it. I dropped the
9 tapes. He expects you to believe that. And I just
10 stand there. Oh, you got me, Officer. And he's
11 what? Almost two blocks away? Wait. 4:30 in the
12 morning. It's dark outside. He comes in through
13 the parking lot. Automatically, he sees me. Is he
14 telling the truth? Of course not.

15 And the other witnesses. They're
16 supposed to be here. Where did he go? That's one
17 of the main witnesses. He up and went to Florida.
18 But they got statements from him of the officers,
19 and they came. Did they tell the truth? Of course
20 not.

21 How did this window become broken? You
22 can't just break a window like that. If you break
23 it with your hand, your hand will be all cut up.
24 My hands wasn't cut up. My fingerprints are not on

1 that window. The window became broken. Who broke
2 it? I asked him, how did this window become
3 broken? I don't know. Do you know what caused it
4 to be broken? No. Well, what do you know? I
5 don't know anything. And they came, and they're
6 telling the truth, and they're trained police
7 officers.

8 No. It doesn't work like that, ladies
9 and gentlemen. You have a burglary. That
10 evidence, you don't have it. We got the right
11 man. Here go your fingerprints here, sir. You did
12 it. We got the tools you used to do it. Damaged
13 these people's property. It's a window broke. Who
14 broke the window? Nobody knows. When it became
15 broke, how, and what caused it?

16 Was any evidence, physical evidence?
17 This is a burglary. Statements ain't going to get
18 it. This is physical, physical. We got a
19 burglary. Things were taken. Your fingerprints on
20 this, sir. And here it is. Here's the evidence to
21 prove it. You touched these people's property.

22 If you touch any property -- did you go
23 have this stuff analyzed at the technician? No.
24 What sloppy work they doing. Sloppy work. Go get

1 the evidence. There's no evidence to get. Not
2 against me.

3 So, what I told you, from the beginning,
4 they picked me up walking. He said walking away.
5 Walking away? With tapes, and I dropped them. And
6 I just stood there waiting on them. Come arrest
7 me. Here I am.

8 They think you're from the moon, ladies
9 and gentlemen. Lies, conspiracy, obstructing. I
10 asked about the arrest report. Where's the arrest
11 -- offense arrest report? I asked the State.
12 They don't know. Don't nobody know where it's at.
13 They told you the truth? No.

14 Everyone knows when you are arrested,
15 there's a what? Arrest report. And it's filled
16 out. We got it right here. Get that. Get that.
17 Write that down so we can remember everything.

18 This is a burglary. Damages is done.
19 That's the man that did it, or either, like I told
20 you before, it was an inside job. Somebody else
21 did it, and they put it on me. Am I going to be
22 able to stick my hand -- hold it. I stuck my hand
23 in. You -- we got you now. Your fingerprints all
24 over the place. Your fingerprints are there.

1 We're going to call the technician. Yeah, that's
2 it. It matches. We got him.

3 I stuck my hand inside the window and
4 grabbing stuff inside Blockbuster, grabbing tapes,
5 but I had 5. He said 1. Then now, they come with
6 30, but it never was mentioned back then.

7 The preliminary hearing that I'm going to
8 present to you is going to show you, hold it. Wait
9 a minute. This never was missing until this. Why
10 is it being missing? He really didn't do it. Just
11 like he said, he was picked up and charged with a
12 crime.

13 There's no what? Physical evidence.
14 Nothing but statements. No, it don't work like
15 that. It doesn't work like that. That means you
16 can just pick up people like, what's happening, and
17 just give them cases. You don't need no evidence.
18 No. Let me see some evidence to prove that this
19 man knowingly entered into Blockbuster and took
20 their property. Don't just come in here and give
21 us no statements. If he touched it, let us see the
22 fingerprints. If you ain't got no fingerprints, he
23 ain't the one.

24 Then, he going to put them in a garbage

1 can? That's really dumb and stupid of me. I'm
2 going to put something in a garbage can? I'm still
3 -- I'm going to put it in the garbage can and then
4 wait right there for the police? Let's be for
5 real, ladies and gentlemen. Come on. You see
6 through it. It's nothing but a bunch of lies.
7 That's all it is. Bunch of lies. That's all it
8 is.

9 I don't have anything to have from you.
10 Did they prove it? Of course not. There is no
11 physical evidence to prove their case. Therefore,
12 the verdict must be -- can't find him guilty.
13 Whoever put this stuff out there, they got away; or
14 either it's an inside job, and he's telling the
15 truth. He was picked up. Like the officer said,
16 he was walking away. Yes, I was walking, but where
17 he put me and placed me never was there, and he
18 pulls in.

19 MS. CALLAS: Objection.

20 THE COURT: Sustained.

21 THE DEFENDANT: And he's heading west, but
22 this place is east, and he was kindly and he
23 remembers everything? No. The arrest report, you
24 got it. Sit right down, sir. We got you. I wrote

1 everything what I can remember. There's no what?
2 Arrest report. That's officer's report. Whenever
3 someone is arrested, that's their arrest report
4 because we're going to look at it. Yeah, that's
5 him. His fingerprints. The officer wrote down
6 fingerprint. We see this evidence. Yeah, it's
7 him. He's guilty. He's guilty beyond a reasonable
8 doubt.

9 Not guilty. Not guilty, and say, he
10 ain't the one. The man is telling the truth. He
11 didn't do it. They picked him up, and he's telling
12 the truth.

13 The main man is not here. They let him
14 go to Florida. Florida? Sir, you just gave
15 statements against me that can send me to prison.
16 Oh, he went to Florida. No. Bring him back here.
17 I asked Officer Lee. She took a statement from
18 him. Where is he at? He's gone to Florida. No.
19 You do a burglary. We got you, got your
20 fingerprints. We know you broke the window.
21 Here's what you used right here, sir, and your
22 fingerprints is on the what? Object that you
23 used.

24 Ladies and gentlemen, your verdict should

1 be not guilty. You're doing the right thing. They
2 haven't proven their case. Nothing, but what?
3 Statements and physical evidence because we have a
4 place that's been what? Damaged. No one knows
5 where and how it became done. Trained police
6 officers, nine years, two years. You went to the
7 academy. You don't know? Well, it wasn't called
8 the technician. Wait a minute. What sloppy work
9 you doing?

10 Call the people so we can get the right
11 person, not just pick up anybody. Now, we ain't
12 got no evidence. Now, he's going to go to court.
13 Now, you're going to be -- you're lying on the
14 man. If he did it, you'd have that evidence. Not
15 guilty. Not guilty.

16 Defense rests.

17 THE COURT: Thank you, Mr. Griffin.

18 In rebuttal, Ms. Callas?

19 MS. CALLAS: Ladies and gentlemen, this is not
20 a who done it at all. We didn't need fingerprints
21 in this case because we had something better. We
22 had a face print of him because the officer comes
23 up on him, and he's standing outside the window
24 with a bunch of tapes in his hands.

1 You see how many are here. Perhaps, if
2 you've been to a Blockbuster before, there are
3 fingerprints from many, many people on these
4 tapes. It would have been impractical to
5 fingerprint all of these tapes. There are a lot of
6 cases where people have met their burden without
7 fingerprints. You don't have them in every case.

8 But the statements that the defendant
9 keeps referring to which is the testimony that you
10 heard in this case, that testimony from all of the
11 witnesses, that's evidence. That's direct
12 evidence. What they testify to, that is evidence.

13 The charge of burglary is entered with
14 the intent to commit theft, entered. We don't even
15 have to show that he broke the window, but we
16 submit to you that he did because the window was
17 broke, and he's right there.

18 And why would he put tapes in a garbage
19 bag? I will submit, it would be a little hard
20 carrying all of these in your hand, got to put them
21 somewhere. Oh, here, a garbage bag. It's empty.
22 I can use it. He was caught when he was coming
23 back for more because he couldn't stop.

24 As far as the testimony of arrest reports

1 in this and that and the other, the officers
2 testified they made a report with regards to this
3 defendant. They made a case report with regards to
4 this defendant. The issue about the two separate
5 kinds. Chicago Police Department is in the process
6 of going electronic. That's why they were
7 different reports.

8 But the evidence here was very credible.
9 Nobody lied. There was no impeachment. With
10 regard to Ms. Nueva, she said she told somebody at
11 the preliminary hearing about the number of tapes
12 that were missing. You're going to get the
13 preliminary hearing transcript. It's not mentioned
14 in there. Why? She wasn't asked. That's not a
15 trial, the transcripts you're getting. That's a
16 preliminary hearing, a different proceeding. This
17 is the trial. This is where all of the testimony
18 regarding the entire incident is put forth. This
19 is what you were told here today.

20 But it's up to you to judge the
21 credibility, and we believe that all of the
22 witnesses testified quite credibly as to what
23 happened. This defendant went up. He saw, you'll
24 get the pictures, through the glass window that

1 there were tapes in there. He busted out the one
2 next to it, and he was pulling out tapes, and he
3 was taking them, and these are them.

4 We ask that you take three things back
5 with you into the jury room, just three. Evidence
6 you heard in this case, the law that the Judge is
7 going to instruct you with, and your common sense.
8 What does your common sense tell you? At 4:30 in
9 the morning, this is the only guy standing outside
10 the window with all these tapes in his hand? Tells
11 you he was getting a burglary, tells you he was
12 stealing.

13 We'd ask that, based on everything that
14 you heard here, that you find him guilty of the
15 offense of burglary. Thank you.

16 THE COURT: Thank you.

17 At this time, I will read to you the
18 Court's instructions on the law that you are to
19 apply to the case, and a copy of these instructions
20 will accompany you into the jury room.

21 Members of the jury, the evidence and
22 arguments in this case have been completed, and I
23 now will instruct you as to the law. The law that
24 applies to this case as stated in these

1 instructions, and it is your duty to follow all of
2 them. You must not single out certain instructions
3 and disregard others. When I use the word he in
4 these instructions, I mean a male or a female.

5 It is your duty to determine the facts
6 and to determine them only from the evidence in
7 this case. You are to apply the law to the facts
8 and in this way decide the case. Neither sympathy
9 nor prejudice should influence you. You should not
10 be influenced by any person's race, color, religion
11 or national ancestry.

12 From time to time, it has been the duty
13 of the Court to rule on the admissibility of the
14 evidence. You should not concern yourselves with
15 the reasons for these rulings. You should
16 disregard questions and exhibits which were
17 withdrawn or to which objections were sustained.

18 Any evidence that was received for a
19 limited purpose should not be considered by you for
20 any other purpose. You should disregard testimony
21 and exhibits which the Court has refused or
22 stricken.

23 The evidence which you should consider
24 consists only of the testimony of the witnesses and

1 the exhibits which the Court has received. You
2 should consider all the evidence in the light of
3 your own observations and experience in life.

4 Neither by these instructions nor by any
5 ruling or remark which I have made do I mean to
6 indicate any opinion as to the facts or as to what
7 your verdict should be.

8 Faithful performance by you of your
9 duties as jurors is vital to the administration of
10 justice. Only you are the judges of the
11 believability of the witnesses and of the weight to
12 be given to the testimony of each of them. In
13 considering the testimony of any witness, you may
14 have take into account his ability and opportunity
15 to observe, his memory, his manner while
16 testifying, any interest, bias, or prejudice he may
17 have, and the reasonableness of his testimony
18 considered in the light of all the evidence in the
19 case.

20 Opening statements are made by the
21 attorneys to acquaint you with the facts they
22 expect to prove. Closing arguments are made by the
23 attorneys to discuss the facts and circumstances in
24 the case and should be confined to the evidence and

1 to reasonable inferences to be drawn from the
2 evidence. Neither opening statements nor closing
3 arguments are evidence, and any statement or
4 argument made by the attorneys which is not based
5 on the evidence should be disregarded.

6 Those of you who took notes during trial
7 may use your notes to refresh your memory during
8 jury deliberations. Each juror should rely upon
9 his or her recollection of the evidence. Just
10 because a juror has taken notes does not
11 necessarily mean that his or her recollection of
12 the evidence is any better or more accurate than
13 the recollection of a juror who did not take
14 notes.

15 When you are discharged from further
16 service in this case, your notes will be collected
17 by the deputy and destroyed. Throughout that
18 process, your notes will remain confidential, and
19 no one will be allowed to see them.

20 The defendant is charged with the offense
21 of burglary. The defendant has pleaded not
22 guilty.

23 The charge against the defendant in this
24 case is contained in a document called the

1 Information. This document is the formal method of
2 charging the defendant and placing the defendant on
3 trial. It is not any evidence against the
4 defendant.

5 The defendant is presumed to be innocent
6 of the charges against him. This presumption
7 remains with him throughout every stage of the
8 trial and during your deliberations on the verdict
9 and is not overcome unless, from all the evidence
10 in the case, you are convinced, beyond a reasonable
11 doubt, that he is guilty.

12 The State has the burden of proving the
13 defendant guilty beyond a reasonable doubt, and
14 this burden remains on the case throughout the
15 case. The defendant is not required to prove his
16 innocence.

17 Circumstantial evidence is the proof of
18 facts or circumstances which give rise to a
19 reasonable inference of other facts which tend to
20 show the guilt or innocence of the defendant.
21 Circumstantial evidence should be considered by you
22 together with all the other evidence in the case in
23 arriving at your verdict.

24 A person commits the offense of burglary

1 when he, without authority, knowingly enters a
2 building or any part thereof with intent to commit
3 therein the offense of theft.

4 To sustain the charge of burglary by
5 unauthorized entry, the State must prove the
6 following propositions. First proposition, that
7 the defendant knowingly entered a building or any
8 part thereof. And second proposition, that the
9 defendant did so without authority. And third
10 proposition, that the defendant did so with intent
11 to commit therein the offense of theft.

12 If you find from your consideration of
13 all the evidence that each one of these
14 propositions has been proved beyond a reasonable
15 doubt, you should find the defendant guilty. If
16 you find from your consideration of all the
17 evidence that any one of these propositions has not
18 been proved beyond a reasonable doubt, you should
19 find the defendant not guilty.

20 When you retire to the jury room, you
21 will first elect one of your members as your
22 foreperson. He or she will preside during your
23 deliberations on your verdict. Your agreement on a
24 verdict must be unanimous. Your verdict must be in

1 writing and signed by all of you, including your
2 foreperson.

3 The defendant is charged with the offense
4 of burglary. You will receive two forms of
5 verdict. You will be provided with both a not
6 guilty and guilty form of verdict. From these two
7 verdict forms, you should select the one verdict
8 form that reflects your verdict and sign it as I
9 have stated. Do not write on the other verdict
10 forms. Sign only one verdict form.

11 And the first verdict form, we, the jury,
12 find the defendant Dwayne Griffin not guilty of
13 burglary, and there's twelve lines, first line
14 indicating for the foreperson.

15 And the second verdict form reads, we,
16 the jury, find the defendant Dwayne Griffin guilty
17 of burglary; and again, there's lines with the
18 first line indicating for the foreperson.

19 At this time, I'm going to ask that the
20 deputies be sworn in to watch over the jurors
21 during their deliberations.

22 (Deputies sworn.)

23 THE COURT: And I'm going to ask that the
24 alternate jurors first go into the jury room and

1 get their belongings and come into the courtroom.
2 The three alternates are Joseph Eichinger and Beth
3 Augustine and Daniel Crove. The three of you would
4 go with the deputy and get your belongings.

5 (Whereupon, alternate jurors left the
6 courtroom and then returned.)

7 THE COURT: Will the alternates wait in the
8 middle of the courtroom, and the 12 jurors could
9 retire to the jury room? We'll send back the
10 exhibits in just a moment.

11 A DEPUTY: All rise for the jury.

12 THE COURT: Here's the instructions

13 (Whereupon, the jury left the courtroom
14 to begin deliberations.)

15 THE COURT: At this time, I'm going to have
16 the three alternates remain until the jury has
17 reached a verdict. You're alternate jurors. So,
18 you're not involved in the deliberation process. I
19 ask that you not discuss the case in the event that
20 you're needed to fill in for a juror. There's room
21 down in the jury room downstairs? I think it's
22 more comfortable if you wait down in the jury
23 room. If you want to just have a seat in the jury
24 box, in just a moment, we'll call down there and

1 see if they can find a comfortable place for you to
2 stay.

3 You need the other exhibits? Mr.
4 Griffin, I have your exhibit.

5 MS. SCHULTZ: We have three photographs and
6 the tapes. Mr. Brown is going to walk down to the
7 jury room. These are the exhibits that go back.

8 A DEPUTY: The tapes go back.

9 THE COURT: The preliminary hearing, the tapes
10 and the photos.

11 (The above-entitled cause was passed
12 and later recalled.)

13 THE COURT: I understand the jurors indicated
14 they have a verdict.

15 A DEPUTY: Yes, they do. Are you ready?

16 THE COURT: Yes. We're ready for the jury.

17 (Whereupon, the jury entered the
18 courtroom, after which the following
19 proceedings were had:)

20 THE COURT: Please be seated. Has the jury
21 reached a verdict?

22 THE FOREPERSON: Yes.

23 THE COURT: And the foreperson would hand the
24 verdict to the deputy, please? And I'll ask the

1 clerk to read the verdict in open court.

2 THE CLERK: We, the jury, find the defendant
3 Dwayne Griffin guilty of burglary.

4 THE COURT: I'm going to ask the clerk to poll
5 the jury at this time.

6 THE CLERK: Annette Dariano, was this then and
7 is this now your verdict?

8 JUROR DARIANO: Yes, it is.

9 THE CLERK: America Farah, was this then and
10 is this now your verdict?

11 JUROR FARAH: Yes, it is.

12 THE CLERK: Layla Toma, (phonetic), was this
13 then and is this now your verdict?

14 JUROR TOMA: Yes.

15 THE CLERK: Jung Kim, was this then and is
16 this now your verdict?

17 JUROR KIM: Yes.

18 THE CLERK: Sidney Weiner, was this then and
19 is this now your verdict?

20 JUROR WEINER: Yes.

21 THE CLERK: Carlyle Rex Walker, was this then
22 and is this now your verdict?

23 JUROR WALKER: Yes.

24 THE CLERK: Kimberly Condin, was this then and

1 is this now your verdict?

2 JUROR CONDIN: Yes.

3 THE CLERK: Frank Patsky, was this then and is
4 this now your verdict?

5 JUROR PATSKY: Yes.

6 THE CLERK: Brian Magouta, (phonetic), was
7 this then and is this now your verdict?

8 JUROR MAGOUTA: Yes.

9 THE CLERK: Steven Foster, was this then and
10 is this now your verdict?

11 JUROR FOSTER: Yes.

12 THE CLERK: Cynthia Nolan, was this then and
13 is this now your verdict?

14 JUROR NOLAN: Yes.

15 THE CLERK: Ted Cadammo, (phonetic), was this
16 then and is this now your verdict?

17 JUROR CADAMMO: Yes.

18 THE COURT: Ladies and gentlemen, that
19 completes your jury service, for you as well as the
20 three alternates who were waiting. And I truly
21 want to thank you for your service on this case.
22 Yesterday, I was very nervous about having you
23 here, given the weather conditions, and I was
24 worried about you last night going home, and coming

1 here this morning. And you were all here
2 promptly. I was most impressed. So, I thank you
3 all for your service.

4 I hope you appreciate this opportunity to
5 serve our country in the form of jury service. You
6 are dismissed. I do have certificate of jury
7 service as well as the deputies have the paper that
8 was made for you. So, thank you very much. You're
9 excused at this time.

10 A DEPUTY: All rise for the jury.

11 (Jury dismissed, after which the
12 following proceedings were had:)

13 MS. CALLAS: Judge, at this time, we're going
14 to ask that the defendant's bond be revoked.

15 THE COURT: Judgment will be entered on the
16 verdict, and bond will be revoked. We'll order a
17 presentence investigation, and we'll set it over
18 for a date for post-trial motions and sentencing.
19 How is February 4th?

20 MS. CALLAS: Fine.

21 (The above-entitled cause was
22 continued to February 4, 2005.)

23

24

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF C O O K)

4

5 I, MARIETTA DELPRETO, CSR 84-1328,
6 Official Court Reporter of the Circuit Court of
7 Cook County, County Department-Criminal Division,
8 do hereby certify that I reported the proceedings
9 had in the above-entitled cause, that I thereafter
10 proceeded to transcribe the foregoing transcript,
11 which I hereby certify is a true and correct
12 transcript of the Report of Proceedings.

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23 Dated this 2nd day
24 of June, 2005.

Marietta DelPreto

MARIETTA DELPRETO,

Official Court Reporter

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